

WASHINGTON STATE GAMBLING COMMISSION

COMMISSION MEETING THURSDAY, JULY 8, 1999 MINUTES

Chairperson Ludwig called the meeting to order at 1:35 p.m., at the Best Western Icicle Inn, Leavenworth. Chair Ludwig introduced the members of the Commission and staff present.

MEMBERS PRESENT:

**CURTIS LUDWIG, Chairperson;
MARSHALL FORREST, Vice Chairperson;
LIZ McLAUGHLIN, and
Ex Officio Members SENATOR MARGARITA PRENTICE,
SENATOR SHIRLEY WINSLEY, and
REPRESENTATIVE ALEX WOOD**

OTHERS PRESENT:

**BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director of Operations;
CALLY CASS-HEALY, Assistant Director of Field Operations;
DERRY FRIES, Assistant Director of Licensing Operations;
BOB BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Department;
JONATHAN McCOY, Assistant Attorney General;
SUSAN YEAGER and SHIRLEY CORBETT, Executive Assistants**

Chairperson Ludwig introduced John Daniels, Chairman of the Muckelshoot Tribes, and reported that the Commission had received a copy of a letter listing the following charitable donations the Nooksack River Casino recently made: Assumption Church, Everson Chamber of Commerce, American Cancer Society, Bridget Collins House, Nooksack Boys and Girls Club, Bellingham Boys and Girls Club, Diabetes Association, Community Dinner '99, Building Industry Association, American Heart Association, Lyndon Orthopedic Guild, Nooksack Tribal Elders, Convention and Visitors' Bureau, Whatcom County Chamber of Commerce, Abbotsford Chamber of Commerce, Northwest Indian College, Richmond Lions Club, Big Brothers and Sisters, and Nooksack Headstart.

Commissioner Forrest noted that Whatcom County's gambling interests suffered when British Columbia introduced mini casinos. Commissioner Forrest noted the Nooksacks worked doubly hard to stay in business, let alone be in a financial position to make charitable contributions. Meeting attendees applauded the Nooksacks.

Commissioner Ludwig addressed the following agenda changes: License Approvals, Item #6, license approval for the Slow Pitch Pub & Eatery in Bellingham was postponed, and under the Tribal Lottery System Review, Item # 8, the approval of Bally's Oasis Machine was continued.

1. LICENSE APPROVALS

New Licenses, Changes, and Tribal Certifications:

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the new licenses, changes, and tribal certifications as listed in the agenda packet pages 1 through 11. *Vote taken; motion carried with three aye votes.*

2. REVIEW OF FRIDAY'S AGENDA

Amy Patjens, Manager, Communications and Legal Department, reviewed Friday's agenda (Items A and C were new additions):

- A. Senator Prentice would be providing a legislative workshop update
- B. A presentation on Problem Gambling by Gary Hanson, Executive Director
- C. A staff report on legislative issues by Assistant Director Bob Berg
- D. Discussion of three sets of rules for discussion: two on established business, two rules dealing with public disclosure, and rule up for discussion and possible filing relating to promotional contests of chance
- E. A discussion on video pull-tabs for charitable and nonprofit organizations and an update on the attorney general's opinion.
- F. Ms. Patjens affirmed an Executive Session would be conducted on Thursday, July 8, 1999.

3. **QUALIFICATION REVIEWS:**

Educational Institute for Rural Families, Pasco:

Derry Fries, Assistant Director of Licensing Operations, highlighted the qualification review contained in the commissioner's agenda. It was noted the organization was formed as a charitable organization and provides programs to improve the education and living conditions of migratory, seasonal and low-income families in Benton and Franklin counties. The organization met its net return for their Class I Bingo license. Mr. Fries reported there were no pending administrative charges as of this date. The organization made significant progress toward their stated purpose. Mr. Fries affirmed that staff recommended approval of the organization as a charitable organization to conduct gambling in Washington. **Ms. Sarah Stephens**, Executive Director for the organization was present to answer questions.

Commissioner McLaughlin inquired why 100 percent of Karen Foster's salary was paid out of gambling when only 10 percent of her time was spent in gambling. **Ms. Stephens** replied that Business Manager, Karen Foster was confused on how to report her salary. Ms. Foster spends ten percent of her time working Bingo operations, and the rest of her time doing bookwork.

Senator Prentice inquired how Ms. Stephens was able to deal with large numbers of children arriving at their facility at the same time. **Ms. Stephens** advised that some childcare facilities actually close down at the end of October and reopen in April, and noted the facility is impacted by roughly 200 children at the time of opening. A lot of families come back year after year and are familiar with the routine. Ms. Stephens advised that her staff meets with the family, completes the paperwork, and typically has the child in a childcare facility the next day.

Senator Prentice asked how the organization dealt with children when they come from out of state and the growing season is late. **Ms. Stephens** responded that they work closely with the crew leaders for local growers so they know when the crops are ready, and staff can be prepared to open their centers early or later as necessary.

Commissioner Forrest asked what financial resources were available besides gambling funding. **Ms. Stephens** advised that the organization received funding from the following entities: seasonal childcare, the Department of Social and Health Services (their primary source of funding), funding through the USDA for the food program, and a small Title I migrant grant through the Office of the Superintendent of Public Instruction, which is specifically targeted for the educational program.

Chair Ludwig noted the organization was located in the city limits of Pasco and that they were the only charitable licensee in Franklin County serving people in both Franklin and Benton counties. **Ms. Stephens** affirmed and advised they also operate a center in Kennewick.

Commissioner McLaughlin made a motion seconded by Commissioner Forrest to approve the Pasco Educational Institute for Rural Families as a charitable organization, and that they be authorized to

conduct gambling activities in the state of Washington. *Vote taken; motion carried with three aye votes.*

Big Brothers and Sisters of Spokane County, Spokane:

Derry Fries, reported that commission staff conducted a qualification review of the organization for the fiscal year ending December 31, 1998. He reviewed the organizational structure and identified the types of services provided by the Big Brothers and Sisters of Spokane County. The organization did not meet its net return for Class M Bingo license; however, the organization has applied and received, and is currently participating in the net moratorium which allows them to operate at their present class. Mr. Fries reported that there were no charges pending against this organization as of this date, and noted that they made significant progress toward their stated purpose. Based upon the review, Mr. Fries affirmed that staff recommended that Big Brothers/Big Sisters of Spokane County be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. **Don Kaufman**, General Managing Director was present and responded to questions from the Commission.

Chair Ludwig noted that income had dropped a little over \$100,000 yet the organization's net gambling operations had not dropped very much. Chair Ludwig asked if expenses had been trimmed. **Mr. Kaufman** indicated the organization had been cutting expenses for the last seven years. He said their area of impact in eastern Washington was surrounded by tribal gaming/slot machines and affirmed a real impact last year when card rooms moved into their area. Mr. Kaufman advised attendance was down approximately 50% from 1992, when approximately \$700,000 was generated in Bingo. Last year, all gaming revenues including rentals netted approximately \$460,000. **Chairperson Ludwig** acknowledged the organization's ability to maintain a profit and a good operation in spite of the competitive environment. **Mr. Kaufman** advised that at one point, wages were frozen for nearly three years. He affirmed the organization has had to take drastic measures in order to stay competitive and still return as many dollars as they can for their charitable purposes.

Commissioner Forrest asked if the organization had hit a plateau in their ability to develop revenue and inquired how Mr. Kaufman felt about the future. **Mr. Kaufman** expressed concern about the future. It is expected that by the first quarter of next year, the Kalispel Tribe will be opening a \$17 million facility approximately 15 minutes from the Spokane hall. They will be opening their facility with over 400 machines and Mr. Kaufman affirmed this is a big concern. Mr. Kaufman reported that their main attendance figures were off 20 percent from the year before, and their June attendance was down 12 percent from the year before. These were not encouraging numbers. Mr. Kaufman indicated that it had been difficult to stay in business. He reported that the organization had an excellent first quarter due to a revamp of their structure. Mr. Kaufman cautioned that they could only make a limited number of major moves like that in a year. Mr. Kaufman projected that the organization would need to make big money in the first quarter because they typically struggled through the second and third quarters, and then usually made good money in the fourth quarter.

Mr. Kaufman advised the organization had been preparing for change. A development director was hired, they are writing more grants, they've backed out competing with other non profits to raise money, and they've started a Bowl for Kid's Sake Program. The organization will sponsor their first-ever top-end premier golf tournament in August. Mr. Kaufman affirmed the organization is looking at new opportunities to raise revenues as the percentage of revenue from gaming that supported their non-profit purpose continues to dwindle.

Chair Ludwig believed that while the casino in Airway Heights may make a substantial impact, it will draw some of the trade from the Spokane Reservation. **Mr. Kaufman** agreed. He noted that the Spokane Tribe had purchased land on the west side of Airway Heights. They are petitioning for the land to come under BIA supervision and reservation status. It was Mr. Kaufman's understanding that Spokane County had not endorsed that move. Other land in question with the Kalispels was inside the city limits of Airway Heights, they only had to get governmental approval, which they did by guaranteeing a tax base. The Kalispels will have a minimum \$300,000 tax payment from that operation.

Chair Ludwig referred to the public hearings held in October of last year or the year before when the Commission heard about the progress made with the Secretary of the Interior. Chair Ludwig remembered having heard very firmly from the Kalispel representatives that they didn't think anyone else would be able to make it through the process. **Mr. Kaufman** thought that statement may have come from Governor Locke because the Governor believed it was a unique situation; the Kalispel's particular reservation property, their inability to build and produce commerce on land that didn't percolate, and because it was too close to the river and too narrow. The Governor had indicated that time would tell how unique it is. **Chair Ludwig** affirmed recalling the comments, but he also recalled someone speaking about the process and suggesting that because it was too hard now, others would not be successful.

Senator Prentice believed there were more facts than what had been stated as the Governor's comments. Senator Prentice explained that the Governor had representatives visit and review the Kalispel Tribe. Senator Prentice advised that she had visited the Kallispels and percolation wasn't the only issue. Senator Prentice reported the Kallispels didn't even have drinking water. Senator Prentice noted they also have problems with the river and being built in a flood plain. Senator Prentice emphasized that she had been to a number of the other places and affirmed the Kallispel situation is unique. Senator Prentice believed one had to actually see the conditions to really understand what Governor Locke was talking about. Senator Prentice believed a key issue was the fact of being surrounded by tribal casinos, and inquired how far away the Spokane's were located.

Mr. Kaufman responded that the Spokane's are located at Fort Spokane Two Rivers, which is approximately 60 miles away. Chewelah is approximately 40 miles to the north, and Bonners Ferry is approximately 80 miles northeast, and the Couer d'Alene's are about 40 miles straight east. Mr. Kaufman noted there is a new casino in Lewiston, Idaho, and in Pendleton, Oregon. Mr. Kaufman affirmed that Spokane is the hub that feeds all the population for all those casinos.

Representative Alex Wood advised that he and Mr. Kaufman had spent a lot of time during the legislative session regarding the bill to cut the tax in half. Representative Wood noted that during the public meetings, it was suggested that the tax should go to zero for non-profit organizations. Representative Wood inquired how the bill would impact his organization. **Mr. Kaufman** said the legislation would impact Spokane by approximately two percent. Mr. Kaufman reported that a decrease from the maximum ten percent down to seven percent over a three-year period had already been negotiated with the City of Spokane. Mr. Kaufman estimated the additional two percent impact would be between \$20,000 to \$26,000 in Bingo, if the gross and payouts remained the same.

Mr. Kaufman believed that in reference to the zero tax issue, there could be an argument made that nonprofits in this state were granted gambling to do the work of projects that state government could not afford. Mr. Kaufman believed there could be a strong argument that the tax being placed on nonprofits might be inappropriate. He noted that an important issue to resolve related to the issue of local option because organizations could be vulnerable to retaliation by a city or county government if it was decided that no tax meant no organization.

Senator Prentice inquired about the status of the initiative to ban gambling in Spokane. **Mr. Kaufman** responded that it was very close. However, it was not to ban gambling, but to ban card room facilities inside the city limits. Mr. Kaufman indicated that he had been assured this would not impact charitable gaming.

Commissioner McLaughlin made a motion seconded by Commissioner Forrest to approve the Big Brothers and Sisters of Spokane County as a charitable organization and to authorize them to conduct gambling activities in the state of Washington. Vote taken; motion carried with three aye votes.

Spokane Youth Sports Association, Spokane:

Derry Fries reported that Commission staff conducted a qualification review of this organization for the fiscal year ending October 31, 1998. The organization was formed as an athletic organization and provides sports programs to youth of the Spokane area between the ages of 6 and 18. The organization met its net return for their Class K Bingo license. Mr. Fries reported that there were no charges pending against the organization as of this date and advised that they had made significant progress toward their stated purpose. Based upon the review, Mr. Fries advised that staff recommended approval of the Spokane Youth Association as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. **Mr. Von Graf**, Executive Director for the Association, was present and introduced **Kevin Wagner**, Primary Gambling Manager.

Chair Ludwig noted the net income from gambling was similar to that of the Big Brothers and Sisters, and inquired if their experience was similar because of the competition in their area. **Mr. Graf** advised that Spokane Youth Sports operate their games on Monday, Tuesday and Wednesday. He noted that for the last couple of years, they have been the only game active on those three days, and they have been fortunate not to have any local competition for Bingo. This is unlike Big Brothers and Sisters because they operate a weekend game when there is more competition. **Chair Ludwig** noted that competition appeared to be coming from other forms such as card rooms and tribal casinos. Mr. Graf affirmed it was increasing and noted the Association's attendance dropped dramatically in the last year. Mr. Graf advised the Association is attempting to cut expenses wherever possible.

Senator Winsley asked if "other gambling net income" meant pull-tabs. **Mr. Graf** replied that it consisted of donations, concessions, interest in dividends, and any interest in dividends from their Foundation. He noted that Spokane Youth Sports donates five percent of their Bingo profits back to the community and to various other non-profit organizations -- one of which is Big Brothers and Big Sisters of Spokane. **Chair Ludwig** and **Commissioner McLaughlin** expressed their appreciation.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the Spokane Youth Sports Association as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with three aye votes.*

Yakima Valley O.I.C., Yakima:

Derry Fries reported that at the June Commission meeting, there were two major concerns expressed regarding the qualification report for the Yakima Valley O.I.C. One was the significant decrease in the organization's Bingo operation and its failure to meet its combined net return of 15 percent for its Class L Bingo license. The other concern related to the executive director's salary. A copy of the report was included in the agenda packet and in a subsequent memo mailed to the Commissioners. The supplemental memo provided more information about the organization. The agenda packet included a summary comparison of gambling activities. Items of concern related to Bingo gross receipts decreasing while the organization attempted to decrease price payouts and operating expenses. Support services increased in the areas of occupancy, depreciation, insurance and miscellaneous expenses. It was noted that none of the executive director's salary is paid from the composition of gambling funds. Mr. Fries noted **Executive Director Henry Beauchamp**, the Finance Director and the Bingo Manager were present.

Chair Ludwig expressed regret for having to continue this item from the last meeting. Chair Ludwig explained that the unprofitable situation for fiscal year 1998 caught the eye of the Commission. Additionally, the Commission wanted to clarify and confirm that none of the executive director's salary came from the gambling operation.

Henry Beauchamp, Executive Director, affirmed. He stated that his operational involvement was very minimal. Mr. Beauchamp advised that the organization had made managerial changes, and he could see signs of improvement. The organization anticipates their net return will improve and hopes that the new electronic gaming approved by the tribes won't drastically affect the turnaround they see beginning to take place. Mr. Beauchamp affirmed the organization is doing everything they can to improve their

net return, including cutting expenses. Mr. Beauchamp advised that they are preparing to review staff cuts and other areas that will bring more relief.

Chair Ludwig recalled the organization's net gambling receipts for 1998 were slightly over \$600,000 however, their net income after all expenses was only at approximately \$1,000. **Mr. Beauchamp** compared July of 1999 with July of 1998 noting there was a significant difference. He reported that they had been hit hard by the competition, just as other non-profits had been. **Chair Ludwig** inquired how many nonprofit bingo operations existed in the greater Yakima area. Mr. Beauchamp responded that there were at least four major operations. **Ben Bishop, Executive Director, Gambling Commission**, noted the operations were not house banked. **Mr. Beauchamp** advised they were still potential competitors. **Chair Ludwig** believed the biggest single item that would draw customers away would be the Legends. Mr. Beauchamp agreed.

Senator Winsley asked for confirmation that the organization had \$1,058 in net gambling income from Class L Bingo and \$32,681 from Class M pull-tabs. **Mulugeta Beyene**, Finance Director for the organization affirmed. **Senator Winsley** computed the total at \$33,739 and noted the organization gave \$16,570 to charity. She questioned where the remaining \$17,000 went. **Mr. Beauchamp** responded that they have started supplementing non-profit activities. **Senator Winsley** asked for specifics. **Mr. Beauchamp** replied that they have many educational programs and gave an example of three different high schools (Pasco, Sunnyside and Yakima) they assist. He stated the programs were not 100 percent funded, and his organization contracts with the school to supplement what is needed to run the school (through bingo revenues). **Senator Winsley** believed the organization should list such expenses under a category such as "Educational Benefits" so the Commission could see the total picture.

Senator Winsley inquired about the new manager's salary. **Mr. Beauchamp** responded that the manager's salary was approximately \$4,000 to \$5,000 per month. **Senator Winsley** asked if the prior manager made the same amount. **Mr. Beauchamp** stated the prior manager received approximately the same salary. He noted there were over 100 employees in the organization and he wasn't sure of every employees' salary. **Mr. Beauchamp** explained that the organization was very broad and provided service to over 100,000 people annually. He distributed informational brochures.

Chair Ludwig indicated the Commission now understood that the \$16,000 was contributions outside the general education purposes, and the balance of the net income went to the general education fund. **Mr. Beauchamp** affirmed. **Chair Ludwig** acknowledged bingo income and net profits were low. He inquired if the bingo operations could continue if revenues stayed at the same low levels. **Mr. Beauchamp** believed things would turn around and wasn't discouraged. Mr. Beauchamp explained the agency had 30 years of operational experience and had survived many other difficult periods.

Chair Ludwig noted that staff recommended the Yakima Valley O.I.C. be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. Chair Ludwig also noted that in the compliance analysis Mr. Fries had indicated there was a Notice of Intent to Limit License Class to Class J. He questioned if the license was approved, and if the organization would operate under a Class J. **Mr. Fries** affirmed. **Director Bishop** clarified this was a separate process by rule.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** that the Yakima Valley O.I.C. be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion carried with three aye votes.*

Senator Winsley addressed the salary issue and questioned how someone could make over \$100,000 a year on a budget of \$6 million. She provided salary and budget data for administrative officers from Franklin, Klickitat, Spokane, Yakima and Chelan counties, and whether the position supervised staff. Senator Winsley noted that the Chief Administrative Officer for Franklin County had a \$24 million budget and make an annual salary of \$50,000. The highest paid person in the state of Washington is the

Director for DSHS, who has a \$12 billion budget and makes \$119,000. Senator Winsley offered the comparison data for informational purposes and consideration.

5. CARD ROOM CONTRACT UNDER APPENDIX B – GENERAL ENHANCEMENT PILOT TEST:

China Palace, Bellingham

Cally Cass-Healy reported that the China Palace applied to operate under Appendix B. Appendix B includes the ability to increase tables up to 15, and to use alternative methods of fee collection such as a rake or per hand, or run a player-supported progressive jackpot scheme. She explained that staff didn't usually provide reports for Appendix B applications. Historically, the information was presented and the Commission would approve if appropriate. A fee assessment worksheet was included in agenda handout packet #1, tab 1, including an operating agreement. Ms. Cass-Healy reported that the China Palace is requesting authorization to operate three poker tables with rake collection method, one player-supported jackpot, a total of five poker tables, and one player-supported jackpot. Currently, they have a total of five tables. Ms. Cass-Healy confirmed that staff recommended approval.

Chair Ludwig asked if there was any blackjack. Ms. Cass-Healy responded in the negative, advising there was just poker, and noted that Kenny Phan from the China Palace was present to respond to questions. **Chair Ludwig** asked Mr. Phan if they had a card room operation at this time. Mr. Phan responded in the negative. He indicated he had the license and tried to open on the poker room operation.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the K. Phan Restaurant Incorporated d.b.a. the China Palace Restaurant. *Vote taken; motion carried with three aye votes.*

6. CARD ROOM CONTRACT UNDER APPENDIX C – HOUSE BANKED PILOT TEST:

Chair Ludwig announced the Slopitch Pub & Eatery located in Bellingham was not prepared to go forward with their request. Therefore, this item would be held until next month.

Silver Dollar Casino, Sea-Tac

Cally Cass-Healy reported that this organization is a commercial restaurant, lounge and card room. They were granted a six-month waiver based upon the experience of the card room manager. The restaurant had been in operation since June 7, 1999. The organization is owned by Big Nevada Incorporated, and Tim Isley, the President owns 52.5 percent. Ms. Cass-Healy noted that Mike Isley, the Vice President owns 22.5 percent, Mike McCarthy owns 10 percent, Janet Buzzard owns 5 percent, Steve Schneider owns 5 percent, Kim Shirley, the Secretary, owns 2.5 percent, and Janet Viet, the Treasurer, owns 2.5 percent. Ms. Cass-Healy reported these shareholders, with the exception of McCarthy and Viet also have an interest in Little Nevada Incorporated, which owns the Silver Dollar Bar & Grill located in Tukwila. The Tukwila business is currently operating in Phase II status. Ms. Cass-Healy advised that the Silver Dollar located in Sea-Tac is requesting approval to conduct house-banked card games with 15 tables, including 11 Blackjack, two Let It Ride, one Caribbean Stud and one Pai Gow Poker table. Special agents reviewed the internal controls and completed the pre-operations inspection checklist. It was determined the licensee's operations are in compliance with the requirements of Appendix C and the internal controls appear to be functional as stated in their internal control submission. Based upon this review, approval to participate in the house-banking card room test as a Level II Phase I operation is recommended.

Ms. Juanita Martindale, introduced herself as the Corporate Liaison and Manager in Gaming Operations for the Silver Dollar Sea-Tac.

Chair Ludwig asked if the Silver Dollar Bar & Grill in Tukwila was a house-banked card room.

Ms. Martindale affirmed it is operating at Phase II. She said it already acquired its \$100 limits, which were granted on March 11th.

Chair Ludwig asked Assistant Attorney General Jon McCoy, if the vote required only a majority vote when a quorum was present. **Mr. McCoy** advised that the requirement for any licensing action required a minimum of three votes.

Chair Ludwig asked Ms. Martindale when she planned to open and she responded that they planned to open as soon as Commission approval was obtained. **Chair Ludwig** explained that he always voted against any organization opening a second location before organizations had been approved for their first location. He asked if she would be terribly disappointed if the matter was continued to next month. Ms. Martindale affirmed her disappointment, stating that everyone was in place and would be ready to work as soon as approved. **Chair Ludwig** advised that he would not suggest setting the matter to next month, but indicated his desire to move it down the docket in order to allow him more time to think it over.

Chair Ludwig addressed his concern whether stockholders in this corporation were also stockholders in another corporation. **Mr. Miller** advised that he had asked why they were using the name Big Nevada when they were all local residents, and this was a small corporation. He affirmed they own a restaurant in Tukwila which has been turned into an enhanced card room. This is the second property purchased and it has been a restaurant for years. He noted the potential inability to get back on the agenda if a decision is delayed could be very damaging, given the fact that the Commission is only approving one or two per month. Mr. Miller expressed his hope that the Silver Dollar Casino be allowed to have their second property. **Chair Ludwig** asked if the property was in the city, or the county. Mr. Miller informed him it was located in the City of SeaTac.

Commissioner McLaughlin asked Mr. McCoy if he was sure that it would require three votes even when there are only three Commissioner's present. **Mr. McCoy** affirmed. **Director Bishop** affirmed it is mandated that there must be three affirmative votes on issues pertaining to licensing issues.

Chair Ludwig recessed the meeting at 2:45 for 10 minutes. The meeting was reconvened at 2:55 p.m. Chair Ludwig asked if there were any other questions or comments from the Commission.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve the Silver Dollar Casino, SeaTac, for a commercial card room license in the house-banked program at Level II Phase I.

Chair Ludwig reiterated his concern and the fact that he had consistently voted against any group entering the pilot program a second time (or more), when others hadn't been permitted a first time. Chair Ludwig advised that he was still opposed to this practice. He stated that he had not changed his position, however, he would call for the vote because he did not want to penalize this operation when other operations have been in the same situation and were approved. Chair Ludwig acknowledged the organization had expended money, hired people and were ready to go, he did not want to stand in the way because of his personal feelings. Vote taken; motion carried with three aye votes.

Six Card Charlie's Gambling Hall and Saloon, Spanaway

Cally Cass-Healy reported this organization is a commercial tavern and card room. The licensee was granted a card room license on February 12, 1999, and they have been operating the tavern since February 17th. Six Card Charlie's has not operated a card room for six months, but they were granted a waiver based on the experience of their card room manager. Ms. Cass-Healy noted that Six Card Charlie's LLC was owned by Dan Robinson and Joseph Basille. Mr. Robinson is the Manager and holds 50 percent interest; Mr. Basille holds the remaining 50 percent. The owners do not hold an interest in any other card room in the enhancement test program. This organization is requesting approval to operate five house-banked blackjack tables. Special agents reviewed their internal controls and

conducted a pre-operations inspection. It was determined the licensees' operations were in compliance with all Appendix C requirements, and the internal controls appeared to be functional as stated in the internal controls submission. Ms. Cass-Healy noted that based on the review, approval to participate in the Commission's house-banking card room test, as a Level II, Phase I operation is recommended.

Chair Ludwig asked if the operation was located in the city, and was told the organization is in the county. He asked if the city that was considering banning any future card rooms, and was advised the county is only considering the ban. Chair Ludwig inquired about the status of the potential ban. **Mr. Basille** said he was unaware of the status. **Chair Ludwig** said he understood the Pierce County proposal would provide a limited time in order to allow an organization a chance to recoup some of their investment. **Mr. Basille** affirmed that was one possibility.

Shirley Winsley asked Mr. Basille if there was a tavern at this location before his ownership. **Mr. Basille** affirmed there was one called The Golden Lion Tavern.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve Six Card Charlie's Gambling Hall and Saloon located in Spanaway as a Level II, Phase I operation. *Vote taken; motion carried with three aye votes.*

7. PHASE II REVIEW – HOUSE BANKED PILOT TEST:

Big Al's Casino, Everett

Cally Cass-Healy reported this organization is a restaurant, bar and card room. It has been in the card room enhancement program since December 2, 1998. She noted Big Al's had the following ownership interest: Denai Gaming, LLC holds 77.5 percent, Ben Cap LLC holds 12.5 percent and the remaining 10 percent is held by four individuals, all with immaterial percentages of stock. Deani Gaming LLC had the following ownership interest: Allison Williams, 52 percent, Terry Deng, 15 percent, Michael Tong, 15 percent, John Law, 15 percent and the remaining 3 percent is held by Denai Gaming Health Stock.

Ms. Cass-Healy noted this organization began conducting house-banked games on December 2, 1998, and currently operates 15 tables consisting of nine blackjack, two progressive blackjack, two Let It Ride, one Caribbean Stud, and one Pai Gow Poker. Ms. Cass-Healy reported that the owners of Big Al's Casino do not currently have an interest in any other card room. She affirmed that staff performed a comprehensive review of the operation including: a review and observation of gaming operations, a review of the closed circuit television system, a review of the cashier's cage, a review of the gaming and organizational records, law enforcement and taxing authority inquiries, a review of the account room controls, and a review of key controls. An exit conference was conducted with the licensee on June 4th and they were cooperative and agreed to make all of the necessary changes requested. Ms. Cass-Healy noted that based on the review, staff recommend approval of a Level II, Phase II status for Big Al's Casino, effective immediately. All previous violations were corrected.

Chair Ludwig asked how Ms. Cass-Healy would compare this violation report listing to others previously approved for Phase II. **Ms. Cass-Healy** responded that it was fairly clean.

Ms. Tiffany Kelfer introduced herself as the Operations Managers for Big Al's Casino and introduced Randy Williams, the General Manager. Ms. Kelfer advised that she was responsible for compiling a book of all the violations and their corrections. She affirmed everything noted had been corrected. **Mr. Williams** advised the facility would plan to open their nightclub after their \$100 limits are approved.

Commissioner McLaughlin made a motion seconded by **Commissioner Forrest** to approve Big Al's Casino in Everett as a Level II, Phase II operation. *Vote taken; motion carried with three aye votes.*

8. TRIBAL LOTTERY SYSTEM REVIEWS

Ballys/Oasis, Reno Nevada

Chair Ludwig advised this item would be continued until the August meeting, and invited **Mr. Kent Caputo** representing the Puyallup Tribal Gaming Commission to address the Commission.

Mr. Caputo reported the Tribe had hoped to complete everything by the July meeting and had asked that it be placed it on this month's Commission meeting agenda. However, just as the Commission staff, GOI, and the testing lab had predicted, they were not able to finish everything. Mr. Caputo thought they were on track for August. Mr. Caputo expressed his appreciation to Director Bishop and staff, for the assistance the Tribe had received while trying to meet the July deadline.

9. OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM THE PUBLIC:

Senator Prentice reported that the Senate and House Committee's would be conducting interim work on the issue of gambling. Four meetings have been tentatively planned with the first one scheduled for July 22nd, in Olympia, in the Sherberg Building at 1:30 p.m. Senator Prentice advised the meeting would be an overview of where we are, how we got where we are, and noted that the Legislature needed to have a very thorough understanding. Senator Prentice urged everyone to invite their legislators to attend. The intent will be to have a field trip with each meeting. Future meetings will hopefully be planned in Spokane, Yakima, Everett, and perhaps a tribal casino or a mini-casino. There will be a day devoted to tribal issues and the committee will be dealing with bingo and compulsive gambling, since this is not a function of the Gambling Commission. Senator Prentice advised they would also deal with Lottery and Horseracing issues. The meetings will not be structured like a hearing; the desire is to have a general discussion where participants can talk. Senator Prentice hoped the meetings would be productive and urged everyone to attend

Mr. Harry Cooper, representing the Gaming Commission for the Nooksack River Casino, said that he had served two terms as the Chairman and also served as Chairman of the NAGT organization. Mr. Cooper reported that the casinos were doing well. However, he expressed concern because of the Canadian devaluation of the dollar and associated impact. He reported that two years ago the tribe was ready to lock their doors and now he thought they were doing considerably better than anticipated. Mr. Cooper expressed appreciation for the work the Commission has done for the Nooksack and the rest of the tribes in the state.

With no further business, **Chair Ludwig** recessed the meeting at 3:20 p.m. **Chair Ludwig** called for an Executive Session to discuss pending investigations and litigation. Chair Ludwig advised the open public meeting would be reconvened following the Executive Session simply for the purpose of adjourning the meeting. Chair Ludwig then advised the Commission would reconvene Friday, July 9, 1999, at 9:30 a.m.

The meeting was reconvened and a motion to adjourn until Friday, July 9th, 1999, prevailed at 4:45 p.m.

WASHINGTON STATE GAMBLING COMMISSION

COMMISSION MEETING FRIDAY, JULY 9, 1999 MINUTES

Chairperson Ludwig called the meeting to order at 9:35 a.m. at the Best Western Icicle Inn, located in Leavenworth, Washington.

MEMBERS PRESENT:

CURTIS LUDWIG, Chair
MARSHALL FORREST, Vice Chair;
ELIZABETH McLAUGHLIN; and
Ex Officio Members SENATOR MARGARITA PRENTICE, and
REPRESENTATIVE ALEX WOOD

OTHERS PRESENT:

BEN BISHOP, Executive Director;
SHERRI WINSLOW, Deputy Director, Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
BOB BERG, Assistant Director, Special Operations;
AMY PATJENS, Manager, Communications and Legal Dept.;
JONATHAN McCOY, Assistant Attorney General; and
SUSAN YEAGER and SHIRLEY CORBETT, Executive Assistants

1. **APPROVAL OF THE MINUTES - JUNE 10 and 11, 1999, MEETINGS:**

Chair Ludwig deferred the approval of the June meeting minutes until August. It was affirmed the May minutes were tentatively approved as written unless there were other comments. The May, June and July minutes will be finalized at the August Commission Meeting.

2. **GAMBLING PREVALENCE STUDY REPORT:**

Mr. Gary Hanson, Executive Director, Washington State Council on Problem Gambling provided a summary of the prevalence surveys that were recently conducted on problem gambling and gambling in the state of Washington. Adult and adolescent surveys were conducted in 1993 and follow-up surveys were conducted in 1999 for comparative data. The adult statistics show stability. Mr. Hanson reported that the past year problem gambling rate, which is not as severe as the pathological gambling, has stayed stable and noted that there has been a decline in the pathological gambling. The Council was surprised because they believed the numbers would go up with the expansion of legalized gambling in the state. The report's author believes this is largely a result of the education efforts and other efforts by the Council on Problem Gambling, the Gambling Commission, and the gambling industry.

One of the questions asked in the survey related to knowledge of the activities of the Washington State Council on Problem Gambling. Thirty-one percent of the general population said they were aware of the work of the Council. Of weekly gamblers, 46 percent said they were aware of the Council. Of the current problem gamblers, 57 percent said they were aware of the work of the Council. Mr. Hanson noted these were very high numbers. The report's author, Rachel Volberg, stated that both the lifetime and current prevalence of problem and pathological gambling in Washington State have remained stable between 1992 and 1998.

Mr. Hanson said Ms. Volberg compared Washington State with other states that have conducted prevalence surveys and found that Washington is in the lower quarter of those states. The combined rate of problem and pathological gambling is interestingly the same as Oregon; however, the Oregon rates have a much higher rate of pathological gambling relative to problem gambling than Washington does.

Ms. Volberg estimated that the lifetime prevalence rate affected between 144, 600 individuals and 270,900 individuals in the state. There was also a higher problem gambling rate among certain types of gambling. Mr. Hanson explained that some people think certain forms of gambling are more addictive than others. Mr. Hanson did not believe so, he noted that people who have gambling problems tend to develop them and go to where certain types of gambling are available. Pull-tabs, card rooms, Tribal Bingo, and Tribal Casinos all had a much higher rate of problem gamblers frequenting them. Mr. Hanson believed this justified a need to focus education efforts in those areas.

Mr. Hanson reported the new adolescent survey had been released and can be found on the Web site or in the Lottery's Web site. The rates remain stable in this survey. Problem gambling stayed stable among adolescents at .9 percent. Problem gambling adolescents -- adolescents who scored problem or At Risk, scored much higher for having drug problems, alcohol problems, or alcohol/drug use.

Mr. Hanson reported that the National Gambling Impact Study Commission recommended that states look into subsidized treatment options for those who cannot afford it. He noted this wasn't something the Gambling Commission could do, but it is something the Legislature needed to consider.

Mr. Frank Miller, Board Member with the Council, addressed the Commission and provided historical information. He reported that in 1992, in East Wenatchee, a settlement was negotiated with a company that attempted to hide ownership. The case settled with a \$250,000 fine. \$50,000 of that fine was used to form the State Council on Problem Gambling. Mr. Miller advised that the intent was to form a partnership between the Gambling Commission and the Council to promote education, promote awareness, and to take a proactive approach on the issue surrounding this form of entertainment. In 1993, the Council entered into a personal service contract with the Gambling Commission because they couldn't get funding. It is through this contract that the Council receives the majority of its funding. Mr. Miller noted that in 1998, the Council asked the Commission for an increase and the rate was raised to \$150,000 per year. On behalf of the Board, Mr. Miller thanked the Commission.

Mr. Miller believed the report was very encouraging because it showed that from 1992 to the present, through education and awareness, problem gambling has not grown out of control. He believed it was because of the work the Council and the gambling industry had done. Mr. Miller thanked the Commission for the help these past two years and hoped there will be future legislative support.

Senator Winsley asked if the survey questioned where the individual gambles, if they are gambling in Washington, Oregon or Nevada, if they play cards or machines, and if there are any marketing incentives. She noted that a person may lose \$35,000, but they like how they're treated when they are a regular customer. **Mr. Hanson** said there were one or two questions regarding out-of-state gambling. Most of the questions focused on the level of gambling and scoring for problem or pathological gambling.

Senator Prentice asked if the adolescent gambling pertained primarily to boys. **Mr. Hanson** responded that adolescent gambling in general was roughly 49 percent female and 51 percent male. However, when the at risk or problem behavior was considered, it was 75 percent male. **Senator Prentice** asked if anyone had tracked enough data to know if adolescents outgrow the habit. **Mr. Hanson** affirmed there is some new research in other places, and nationwide, adolescents score almost double for having gambling problems than adults. However, it appears that a lot of them outgrow the habit. Rachel Volberg has stated that more horizontal research needs to be done to follow both adult and adolescent trends.

Representative Wood complemented Mr. Hanson for a great job on education, and inquired if the program could be expanded to include treatment. He noted that identifying the problem is one thing, now we needed to help people cure the problem. **Mr. Hanson** advised that treating problem gamblers is tough because they have a very high relapse rate. Experts compare it to treating a cocaine addiction or even worse. Mr. Hanson noted that one of the problems in this state is a lack of professional people trained for treatment. There are a few places in the Puget Sound Region and a few in the Spokane area. If an individual is lucky, and if they've got a drug or alcohol and a gambling problem, they can usually get into a treatment facility through the Division of Alcohol and Substance Abuse. Approximately 40 percent of the people have a dual addiction, 60 percent just have a gambling addiction. Mr. Hanson acknowledged the need for some type of focus on the treatment issue.

3. **STAFF REPORT:**

Mr. Bob Berg, Assistant Director, Special Operations, reviewed agency requested legislation which will be formally presented to the Commission in September. The following projects are under way at this time:

A revisit of legislation requested during the last session dealing with the **dissemination of non-conviction criminal history data**. Mr. Berg explained that the Commission is a law enforcement agency. When the agency works with their criminal law enforcement agency hat on, there is no problem receiving criminal history information, both conviction and non-conviction data from other law enforcement agencies, within the state and throughout the United States. However, the Commission also has a very important role to fill in its regulatory responsibilities to make sure they keep the criminal element out, and to maintain a high integrity of the gambling industry in the state of Washington. To that end, the agency performs a great deal of analysis when people apply to be licensed. Mr. Berg stated that the Commission did not receive the same degree of information dissemination from other criminal justice agencies when they are attempting to determine suitability for licensing. Simply put, the legislation put forth last legislative session, and hopefully this session with the Commission's concurrence, will be legislation that clearly identifies the role of the Commission when receiving non-conviction data to determine suitability for license. Mr. Berg affirmed this is expressly stated in the agency's mission. The legislation would require an amendment to RCW 10.97 and staff will be working to fully develop the proposal for the September Commission meeting.

Mr. Berg advised the second issue is to further **refine the aspect of cheating**. Cheating is currently defined in RCW 9.46.196. Current statute defines the offense and also provides a penalty which is at most, a gross misdemeanor. Historically, there has been limited success in pursuing cheating as a theft. Mr. Berg stated that theft above \$250 is a Class B felony, and above \$1,500 is a Class A felony. However, in undercover investigations, it is difficult to quantify amounts of money that might be stolen through cheating. Therefore, prosecutors are reticent to go for a theft prosecution and rely on the cheating statute. Mr. Berg affirmed this is a problem because the offender doesn't get a penalty commensurate with the offense. The internal proposal is to define cheating as its own RCW and then set forth degrees of cheating that would mirror the professional gambling statute. Mr. Berg affirmed that irrespective of the amounts stolen, if the conspiracy is five or more individuals, the offense would be cheating in the first degree, Class B felony. If there was more than one person, it would be a Class C felony, if it was someone who was just capping a bet – putting more money out after they could, or taking money away after they could not, the offense would remain at the gross misdemeanor level. Mr. Berg noted that stakeholders had been involved with this process (Washington Association of Sheriffs and Police Chiefs, Recreational Gambling Association, and the Washington Association of Prosecuting Attorneys), and staff will continue to work with interested groups as the legislation is developed for formal presentation to the Commission at the August meeting.

4. **RULES FOR DISCUSSION:**

Established Business Defined

Ms. Amy Patjens, Manager, Communications and Legal Department, noted that at the April Commission meeting, staff was asked to look into rules that addressed when a business would be considered an "established food and drink business." Concern had been raised that a lot of people were opening their restaurant and card room on the exact same date. Ms. Patjens noted that under the current rule, an entity would be considered to be an established food and drink business if they were open to the public for 90 days, or they were presumed to be established if the business had received all of its permits and then provided an estimate of what its food and drink sales were going to be compared to other sales. There are two rules on the agenda based on the different discussions.

Ms. Patjens reported that Item 4(A) identifies that a business must actually operate the food and drink business for 30 days prior to the license being granted. There is also Alternative #1 which says that a business would have to operate 30 days prior to applying for the gambling license. Ms. Patjens noted that once the entity has a completed application, it takes staff between 45 and 60 days to issue the license. If the entity must be operating 30 days prior to applying for the license, it means they would be operating about 90 days before they would actually get the license.

Ms. Patjens reported that Item 4(B) clarifies that the food and drink business must be open to the public at all times that the gambling portion is being operated. Staff recommended further discussion. Ms. Patjens said Commissioners might have been feeling like they have talked about this rule for some time, and they have. Because of the filing deadlines with the Code Reviser's Office, this item will be on the agenda for a total of four months, and will be up for final action next month.

Commissioner McLaughlin asked Ms. Patjens what the original rule said in simple language. **Ms. Patjens** replied that the original rule said the business had to be operating the restaurant for 90 days and would be considered established. Or, if the business hasn't been open for 90 days, then they would be presumed to be established if they have all of their permits and have provided staff an estimate of what their food and drink sales were going to be. Ms. Patjens explained that if they have their permits and they give their estimates, there is no actual operation requirement. The rule would insert an operation requirement for the restaurant.

Commissioner McLaughlin discussed an example of a restaurant that had operated for some time, closed, and was purchased later by someone else who opened an enhanced card room and restaurant at the same time. **Ms. Patjens** affirmed that would be okay under Subsection 4, which states that in a case where the restaurant had been operating and the business was transferred, it would be considered established if it had been licensed 30 days prior to the date of the purchase. **Commissioner McLaughlin** said this restaurant had not been licensed for gambling but had been able to open up anyway. **Ms. Patjens** believed this was an example why Commissioner Ludwig had asked staff to find a way to fix the problem. As it exists, there are ways to get around the rule.

Commissioner Forrest indicated that he had a problem with requiring someone to operate a restaurant prior to their application -- knowing that their intent was to open a card room, and knowing there are many things that can go wrong with applications. He said he would be sympathetic to an idea to issue the license so the business knows they have met all of the qualifications and that the employees and the owners have gone through background checks, but the license would become effective 30 days after the license was issued. He thought that the day the license was issued and the day the entity could operate would not have to be the same. Commissioner Forrest believed that with this process there wouldn't be someone in a restaurant business that was not economically viable, and then have the Commission address problems and delay action for 90 or even 120 days waiting for an approval. Meanwhile, their financing is being jeopardized. Commissioner Forrest believed that "established" should be given some meaning and felt it would be fair to say that if a restaurant is in business for 30 days, it is established.

Commissioner McLaughlin asked if this was addressed in Amendment No. 2. **Director Bishop** affirmed that it was close, with the caveat that a lot of the sales of restaurants and taverns are conditional sales. Director Bishop explained that the businessman agrees to purchase a business based

on the fact that he gets all his licenses. It doesn't work the same if they say it is tied to the fact that they have operated for 30 days. However, Director Bishop noted "provided that the business has operated at least 30 days in the previous six months" -- it could be deemed to be an established business. Then, a transfer of the business could be made on the condition they received their license. This would protect the owner from being at risk too much.

Chair Ludwig thought he caused a problem with the amendment now labeled No. 1. He recognized the business would have to be in such a status at the time they applied, and realized this wasn't very practical.

Commissioner Forrest addressed the following text in paragraph #2: "if businesses applied for and received all licenses and permits" -- included gambling permits. If so, he thought the language should be very explicit. **Mr. McCoy** suggested it could be clarified by adding "all other licenses or permits required". He believed it was intended to cover the business and liquor licenses and etc., other than gambling licenses. Mr. McCoy suggested the insertion of "prior to all other licenses" rather than just licenses.

Commissioner McLaughlin suggested verbiage that "established food and drink businesses that have been open to the public at least 30 days," because the language above states: "has received all licenses and permits." **Commissioner Forrest** indicated that what troubled him was whether "all licenses" included the gambling license or not. He understood Mr. McCoy's suggestion that it was licenses other than the gambling license. **Director Bishop** affirmed this is the way the rule has always been applied. He noted that a requirement to get a gambling license is that the business be an established food and drink business. **Commissioner Forrest** pointed out that in #2, "has" would be grammatically correct versus "is". **Chair Ludwig** called for further questions. **Mr. McCoy** said the recommendation would not constitute a substantive change.

Bob Tull, Attorney representing the Recreational Gaming Association, addressed concerns about the mechanics of how rule changes take place. Mr. Tull said this had been on the books for approximately eight years, and he didn't feel it was the real problem. He indicated the rule was created to solve a problem for the small operator who had so many things to consider in setting up a business. Mr. Tull believed the reason the debate commenced a couple of months ago was actually a reaction caused by the current list situation and the fact that the Chair was concerned and would prefer to have the list constructed so every person got a shot at licensure before any person or entity got a second shot at licensure. He believed this is what motivated the talk about what is an established business. Mr. Tull preferred the current rule because even a 30-day period would cause unnecessary stress. Mr. Tull thought that if the 30-day restaurant operation period was implemented while a proposed establishment finished their remodeling job, they could potentially open a hot dog stand and not much of substance would have been accomplished.

Mr. Tull questioned if the Commission were to change the rule, would it apply to people who were already in the pipeline, and how it would apply. He noted that businesses would have to spend the \$2-\$3 million to get the business open and then wait for their license.

Commissioner Forrest questioned if the business did or did not have to be established. **Mr. Tull** responded in the negative. He explained the original intent of the rule was to make sure that licenses weren't issued for paper businesses. Mr. Tull noted that by defining it and operating it the way the staff has done in the past, the business had to be there, which took care of pre-existing operations, or they had to show they were serious -- that they had gone through the processes that were established and were serious. He said some people spend hundreds of thousands of dollars just on the licensing and building permit process for facilities.

Commissioner Forrest felt it would be awkward to set up a word like "established business" and define away the meaning. Commissioner Forrest asked why not just strike it and say that a gambling license will be issued when the Commission is convinced they have the premises ready. If the desire is to have

people operate for 30 days, Commissioner Forrest believed they ought to have their license so they know that they have a 30-day period of running as a restaurant. He felt it would be awkward to have someone start a restaurant at a substantial investment and still have their gambling license floating around without knowing it would be approved.

Mr. Tull noted that under the current situation, a person had to get their card room license and then be in the queue to be processed for enhanced card room participation. Presumably next year, the final rules package will change that process. A person will get licensed as a certain type of card room and there won't be a phase of having to get one license, wait, and then get processed. Mr. Tull felt this would be smoother, but in the meantime, it is the function of the Commission to look at the old rules and decide whether or not times and circumstances or other facts have changed that require a wholesale revision. Mr. Tull affirmed the notion of change is not offensive, it's just that this is being driven by a concern about the list that caused stresses. The big question about established business is a practical one.

Mr. McCoy said the established business rule is a requirement for the commercial stimulant. It is in the language of the statute that a commercial stimulant is defined as an activity that is done on behalf of an established business to stimulate food and drink sales. Mr. McCoy clarified that is where the phrase "established business" came from and why the Commission originally felt the need to provide a definition, because it was a term that was used in the statute but was not defined. The Commission then took the step of defining the term "established business" and the current rule is the result. The purpose of the rule is to make it consistent with the statute in regard to commercial stimulant -- the authorized activity. **Chair Ludwig** indicated there may not be a need to change the current rule. He stated that he was not disappointed it came up for discussion, because he thought the discussion was helpful. He noted that if it were up for final action today, he would probably vote against making a change.

Commissioner McLaughlin asked if the item could be pulled from the agenda. **Chair Ludwig** suspected they could, or hold it off for permanent rules. **Commissioner McLaughlin** asked Director Bishop if he thought this was something that needed to be fixed. **Director Bishop** replied that the issue was initiated because of the Chairman's concern. It was placed on the agenda for discussion at the request of the Chair, and every month staff have come back with a new version. Director Bishop noted that Subset B of the rule package did need some changes to clarify that the food and drink business needed to be open at all times while the gambling is occurring. Otherwise, the perspective is that this is a gambling business that has food and drink. If the Commission decides to not pursue the first part of the rule, Director Bishop encouraged that they go forward with the second part -- the changes to WAC 230-04-080.

Chair Ludwig asked if anyone in the audience wished to comment on this issue. There were no additional comments. Chair Ludwig closed the public hearing and advised the matter would be continued in order to follow Director Bishop's recommendation to change Part 2. **Director Bishop** advised that if the Commission decided not to make the changes discussed, they could merely vote not to make the changes and to approve the second part in the second rules. **Commissioner McLaughlin** concurred.

5. PUBLIC DISCLOSURE REQUESTS:

Ms. Patjens reported there were two rules for discussion, they were in their third month of discussion, and would be up for final action next month. Ms. Patjens addressed last year's agency-sponsored legislation regarding the secondary dissemination of criminal history information and internal policies. Staff discovered they had two WAC's that weren't consistent with state law. The law says that an agency that has conviction information can disclose that information to any member of the public, but non-conviction records (which they also end up with) would not be released. The effect of this WAC will be that it will be consistent with state law.

Chair Ludwig opened the item for public discussion. There was none so he closed the public hearing.

6. RULES FOR DISCUSSION and POSSIBLE FILING:

Promotional Contests of Chance

Ms. Patjens advised that Item No. 6 related to a set of rules dealing with promotional contests of chance. She explained the history of promos and the history of what's been called "No Fee Bingo" or "Bacon Bingo" or "Beaver Bingo" or "Barstool Bingo" led to the current rules. The current law about promotional contests of chance became part of the Gambling Act in about 1975 or 1976. State law says that people must be able to participate equally with others in a promotional contest of chance. The statute lists about nine requirements.

Ms. Patjens advised this was the type of promo where an individual could drop a business card in the fishbowl and someone would win a prize. There is no requirement that anything be paid. Mr. Patjens affirmed there was an overlap between the Commission and the Consumer Protection Division of the Attorney General's Office regarding promotional contests of chance. The Gambling Commission, at least in this state's law, talks about the methods of entry. If someone had a complaint about the drawing itself or how prizes were disclosed, or maybe they thought there was false advertisement, then the complaint would actually go to the Consumer Protection Division of the Attorney General's Office. However, both agencies have jurisdiction over promos.

Ms. Patjens noted the Gambling Commission does not license these activities. In 1988, there was a bill before the Legislature which would have allowed the Commission to require registration and perhaps more importantly also have a registration fee for someone who wanted to have their promotional contest of chance registered. This was something that other states do. The bill did not pass. Originally, the licensing operations division did approve all the promos in the state and facilitated approximately 90 a month. This was an activity where no fees were collected. After the bill allowing the agency to collect a registration fee failed, a decision was made to streamline the operation, and the agency stopped approving them per se. Ms. Patjens reported that when people call about promos, the agency provides a brochure. If businesses have additional questions, they are advised to consult their attorney.

Ms. Patjens reported that staff looked at the statute again in the early 90's. They felt there wouldn't be public harm with having a broader interpretation of the statute, and as long as the operator had a free method of entry to get into the contest, the contest would be okay.

Ms. Patjens said the agency started getting questions (in early 1997) from people who had licenses who said that they knew other states had something called "No Fee Bingo" or "Bar Bingo". It was run as a promo, and didn't cost anything to play. It was a way of getting people into the place of business and to enhance their particular service. In response to the requests, staff started doing approval letters which gave permission to do "No Fee Bingo". The operator could not charge anything (no type of a cover charge), and they had to have a written letter from Commission staff before they started operating the game. Prizes had to be of a nominal value, they could give away food, hats, shirts or other things that would be valued at \$25 or less. Cash prizes were prohibited. There couldn't be equipment from a licensed bingo hall, and therefore, professional bingo ball blowers would not be involved in these commercial businesses. Ms. Patjens explained that people were told the statutory authority was a little unclear in this area and that the Commission may choose to reevaluate it in the future. That is precisely what happened a few months ago. The Commission had approved about 40 businesses for no fee bingo and more and more requests began coming in. Although the original approval letters did not say operators could only do this one or two days a week for a limited period of time, that was staff's understanding. The agency started getting requests from people who wanted to have no fee bingo seven days a week for three hours at a time. Staff also discovered there were some businesses operating without having any approval from Commission staff.

Ms. Patjens advised that staff returned to the promotional statute again and thought one option would be to go back to a stricter interpretation of the statute, telling people they could no longer do "No Fee Bingo." Additionally, the Commission could suggest a legislative change and actually have bingo added as one of the methods of entry for a promotional contest of chance. Staff sent letters to businesses and

received several responses and many phone calls opposing this change. Ms. Patjens noted that copies of the letters were under Tab 16 in the Commissioners' Agenda Packet. The phone calls were not recorded, but a staff person spent several hours talking with people who were upset.

Ms. Patjens said the Director reevaluated the agency's position and decided to bring draft rules forward to resolve some of the issues. All of the issues are not related specifically to no fee bingo. The proposed rules package will clean up many of the questions that were received.

Director Bishop emphasized that it was not his intent to regulate promotional contests of chance and that he didn't think the statute required the Commission to regulate promotional contests of chance. He believed the statute required the agency to control it, therefore, the rules proposed are merely to give the Commission a better stance to control it, with some interpretation. Director Bishop said he didn't want to get into approving or giving permits for them, but he would like to have the current interpretations codified. He noted the proposed rules would help deal with small business as well as very large corporations such as McDonald's, Safeway, and Texaco. It was noted that almost every big corporation appears to be running promotions.

Commissioner Forrest noted that if the Commission is going to approve something and it is not licensed, it creates an odd enforcement situation. Normally, the purpose of a license is to have a hammer in order to regulate the activity. He recommended the statute be made available for the next discussion. He noted that if this activity were going on at McDonald's, Texaco and the mini-stops, he would not plan to have them apply to the Commission. **Director Bishop** interjected that he did not want anyone to apply for approval. Commissioner Forrest thought this issue should be handled by the Legislature and said he was inclined to get out of the business.

Commissioner McLaughlin thought the statute gave bingo to the non-profits. **Director Bishop** affirmed that bingo is a defined term and only charitable non-profit organizations are authorized to operate "bingo" per se. Director Bishop said the point that has been debated is -- what is a game similar to bingo if it is not conducted by a charitable non-profit organization? He believed it was obvious that if the game involved taking a chance to win a prize, then it is a contest of chance. If such a game also involves "valuable" consideration, it is a lottery but not bingo as defined. Director Bishop affirmed that in his opinion, there was a fine line between the authorized and illegal activities and noted the beginning of RCW 9.46.010 which states "such lotteries for which no valuable consideration has been paid." Director Bishop believed that part of .010 was addressing promotions. In 1975, the staff of the Gambling Commission indicated in their annual report that they were having considerable trouble with this activity and asked for the first law to specifically clarify promotional contests of chance.

Commissioner McLaughlin asked if it was the staff that was uncomfortable, or the citizens. **Director Bishop** responded both; the agency had received complaints about a given tavern operating a three-hour Bingo session on Thursday night. He thought this was interesting because they had actually been approved to do this type of promotional event. Director Bishop clarified this approval occurred before his time, and noted that he personally did not want to approve these types of events, but felt they were pushing the promotional contests of chance law. Director Bishop affirmed the Gambling Commission would control them, which meant that if a complaint was received, the Commission would investigate and would try to protect the public. In order to facilitate this control, there are certain rules, definitions or interpretations that can be referenced and relied upon by the staff.

Discussion was initiated regarding the types of contests of chance, and **Director Bishop** offered an example of someone purchasing a soda and finding a chance under the bottle cap. Director Bishop advised that one of the allowable methods of entry is a coupon or an entry blank that is a part of a product and attached by the manufacturer. If the manufacturer attaches the chance under a bottle cap, this type of contest is okay. However, there is an exception when a person must buy the product. The statute says individuals must be allowed to get a chance without purchasing something and this usually entails the individual sending in a self-addressed, stamped envelope for entry. A tavern owner would not be able to stipulate that if a person buys a glass of beer they'll get a chance at a prize. Director Bishop

indicated his desire to have the Attorney General regulate this activity and that it be removed from the Commission's statute.

Mr. McCoy responded that there was history regarding the distinction between promotional contests and how they were created, and commercial stimulants and how they fit into the process. He said that part of the problem is that the typical promotional contest is an attempt to get the customer in the door, or something to get the customer to come back. It is not something to keep the customer in place, which is what the commercial stimulant activities are about. Mr. McCoy advised that when the statute for promotional contests was added to RCW 9.46, it specifically listed activities that were deemed not to be considered for purposes of a lottery. Anything that wasn't on the list was deemed to be considered sufficient to support a lottery and therefore illegal. Mr. McCoy clarified that the language had been changed, but essentially it had been structured so that there were authorized methods of entry and anything not authorized was prohibited. He said things have become muddled because business practices have gone beyond what the statute literally covers.

Senator Winsley wanted to know what types of prizes were being giving away. **Ms. Patjens** responded things under \$25 such as a pound of bacon, which is how it came to be called "Bacon Bingo." She noted that one of the things the proposed rule would do is not require the player to be on the premises more than 15 minutes before the game starts, and 30 minutes in total.

Senator Prentice asked why this couldn't be sent to the Attorney General's Office. She couldn't imagine the Legislature wanting to get involved in this issue. **Commissioner McLaughlin** agreed. **Director Bishop** reiterated his desire to remove it from statute. **Commissioner Forrest** commented that if the Commission believed it is gambling, then they have responsibilities; if not, he believed the Legislature needed to decide if it is gambling. Commissioner Forrest noted the worst thing would be to adopt regulations the Commission does not plan to enforce and apply them to people with whom they have no other connection. Commissioner Forrest supported waiting until the demand is sufficient to the point the Legislature would want to do something.

Chair Ludwig opened the meeting for public comments. **Commissioner McLaughlin** asked John Beadle if the three-hour no fee bingo in a tavern bothered the bingo hall operations. Mr. Beadle responded that he was unaware of operations playing up to three hours. He thought this might be an isolated case. He said he was aware of 15 or 20-minute sessions and noted that Bacon Bingo has never bothered them.

Vito Chiechi, representing the Washington State Licensed Beverage Association, pleaded with the Commission to allow the small tavern owners of the state to run no fee bingo. He advised the bingo operations were initiated to bring customers into establishments and affirmed it had been a boon. This has been a business stimulant and the small taverns are just people who would like to have an hour or two of bingo. Mr. Chiechi advised that the people who frequent smaller places are there to enjoy conversation with their neighbors and he expressed his hope that there wouldn't be too many restrictions placed on these types of operations. **Senator Winsley** inquired if it would it be better to have a game limit rather than an hour limit. Mr. Chiechi thought this kind of proposal could be worked out with the Gambling Commission staff.

Chair Ludwig closed the public hearing. **Commissioner Forrest** suggested not filing the rules. **Chair Ludwig** responded that without a motion and at the suggestion of Commissioner Forrest, the matter would be deferred to next month's meeting.

Mr. Chiechi inquired what the tavern people should do in the meantime. **Director Bishop** responded that if this activity was not gambling, there was no impact to the Gambling Commission. He clarified that if it was not gambling, the operations did not require approval, and he believed Mr. Chiechi's members could do as they wish. **Mr. Chiechi** requested the Commission send a letter to tavern owners.

Commissioner Forrest advised that he didn't think the Commission was prepared to do that. **Senator Prentice** asked if the tavern owners had been instructed not to play. **Director Bishop** advised that

Commission staff had withdrawn all approvals. He said that in staff's opinion, Bar Bingo as it is being played did not fit into the Gambling Statute. **Chair Ludwig** suggested that Mr. Chiechi tell his members that this issue is under consideration and pending any rule or decision they could continue their previous operations. **Director Bishop** concurred. **Commissioner McLaughlin** pointed out that if Director Bishop had sent a letter stating there were no approvals, something should come from the Gambling Commission saying they can operate until a decision is made. **Director Bishop** stated that he is interested in getting an answer to this situation because it puts Gambling Commission staff in a bad position when they walk into a place that is not in accordance with the statute. He emphasized that he did not want to approve or regulate promotional contests of chance. At this time, charities are not complaining and Director Bishop suggested not imposing restrictions on their operations during the period this rule is being discussed. **Senator Prentice** suggested a stay. **Director Bishop** advised he would issue a stay unless a Commissioner had an objection. None were expressed.

7. **OTHER BUSINESS/GENERAL DISCUSSION/COMMENTS FROM the PUBLIC:**

Discussion of Video Pull-tabs for Charitable and Nonprofit Organizations

Chair Ludwig noted the Commission is still waiting for the formal AG opinion, which is in a final review stage and should arrive shortly. **Mr. McCoy** affirmed that once the opinion is published it would be placed on the Web.

Chair Ludwig advised there would be no further discussion on this item today. He asked if there were any other business or public comments.

Ric Newgard of the Washington Charitable and Civic Gaming Association advised his organization wanted to publicly thank a member of the Gambling Commission staff who had been very helpful in keeping communications open. On behalf of the Association, he presented Ms. Susan Yeager with a gift.

Director Bishop noted that Ms. Yeager had worked with the Commission for almost eight years. During that time, she served 12 Commissioners and two Directors, an untold number of members of the public, and licensees. Ms. Yeager decided to move to southern California. Director Bishop noted that the members of the entire agency would miss Susan. Director Bishop presented Ms. Yeager with a gift from the agency in recognition of her fine service to the staff and the Commission. **Ms. Yeager** expressed appreciation for the gifts and thanked everyone for their support and good wishes. **Commissioner McLaughlin** and **Chair Ludwig** agreed that Ms. Yeager would be sorely missed.

With no further business, a motion for adjournment prevailed at 11:25 a.m.

Minutes submitted to the Commission for approval.

*Shirley A. Corbett,
Executive Assistant*